IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

Crl.MC.No. 1937 of 2006(B)

CRIME NO.453/05 OF THE MANJASURAM POLICE STATION

PETITIONER:
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1. KUNDANKUMAR A.SHETTY,
   S/O.ANAND KRISHNA SHETTY,
   E/3, BHAILIPETH, NAGZAR,
   BICHOLIM, GOA.

2. M.BALAKRISHNA,
   S/O.LATE M.B.BANTA,
   R/AT. PARAKKILA HOUSE,
   MADHUR VILLAGE, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT
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1. STATE,
   REP. BY SHO,
   MANJASURAM, REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. ASSISTANT ENGINEER,
   ELECTRICAL SECTION,
   VORKADY.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.K.S.ANIL, SC, KSEB
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1937 of 2006

Dated this the 13th day of April 2007

O R D E R

The petitioner faces allegations under Sections 135 and 138 etc. of the Indian Electricity Act. Investigation is complete now - that is after the filing of this Criminal Miscellaneous Case. Final report has been filed and cognizance has been taken and a case is registered as C.C.No.167/07 before the learned Chief Judicial Magistrate-Kasaragod, it is submitted. The crux of the contention of the petitioner is that in as much as the complaint is not filed before the learned Chief Judicial Magistrate by the Kerala State Electricity Board or its authorised officer, the proceedings initiated before the learned Chief Judicial Magistrate is void and not legally sustainable. Of course, when this Criminal Miscellaneous Case was filed, the crime was registered and the investigation was in progress. The petitioner submits that, in these circumstances, it may be declared that the cognizance of the offence taken by the learned Magistrate without a written compliant by the Kerala State Electricity Board

or its authorised officer is, without jurisdiction and it is, therefore, void. The learned Magistrate may be restrained from proceeding the case, it is prayed.

2. The question is now covered squarely by a decision of this court in Paramasivam M. vs. Union of India & Others [2006 (4) ILR Kerala 874]. Cognizance taken is legally unsustainable and in the light of the dictum in that case, the petitioner can be granted relief to that extent. Needless to say, the option of the Kerala State Electricity Board or its authorised officer to file a complaint before the learned Magistrate in the light of the materials in the report filed by the police and other materials, if any, available with it shall remain unfettered.

3. This Criminal Miscellaneous Case is, in these circumstances, allowed. Cognizance taken by the learned Magistrate in C.C.No.167/07 before the learned Chief Judicial Magistrate, Kasaragod is quashed with the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007